

DEPARTMENT OF STATE REVENUE

28940632.LOF

LETTER OF FINDINGS NUMBER: 28940632.LOF CONTROLLED SUBSTANCE EXCISE TAX FOR THE TAX PERIOD OF AUGUST 2, 1994

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Controlled Substance Excise Tax - Liability

Authority: Indiana Code § 6-7-3-5. *Bryant v. Indiana Department of State Revenue*, 660 N.E.2d 290 (Ind.1995). *Hayse v. Indiana Department of State Revenue*, 660 N.E.2d 325 (Ind.1995). *Baily v. Indiana Department of State Revenue*, 660 N.E.2d 322 (Ind.1995). *Cliffi v. Indiana Department of State Revenue*, 660 N.E.2d 310 (Ind.1995). *Hall v. Indiana Department of State Revenue*, 660 N.E.2d 319 (Ind.1995).
The taxpayers protests assessment of controlled substance excise tax.

STATEMENT OF FACTS

Brown County Sheriff's Deputies arrested the taxpayer and her boyfriend on July 20, 1994, for possession of marijuana. The police entered taxpayer's residences under the authority of a search warrant and discovered a quantity of suspected marijuana that was later tested and weighed and was in fact marijuana weighing 137.20 grams. The Department issued a jeopardy assessment against the taxpayer on August 2, 1994. Taxpayer, by her attorney, timely filed protest to the tax assessment raising several constitutional issues.

I. Controlled Substance Excise Tax Liability

DISCUSSION

In Indiana, the manufacture, possession or delivery of marijuana is taxable.¹ There was no controlled substances excise tax ("CSET") paid on taxpayer's marijuana, so the Department assessed the tax against her and demanded payment. Indiana law specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department's claim for the unpaid tax is valid². The taxpayers timely protested the tax assessment and now bare the burden of proving that the proposed assessment is wrong. In support of her protest, the taxpayer states the criminal proceedings against her were dismissed, but she produced no other evidence. The taxpayers fail the burden of showing the CSET assessments are wrong by a preponderance of evidence.

Additionally, our Supreme Court has already addressed the constitutionality of the CSET and has found it sound.

³Therefore, it is not necessary for the Department to reanalyze these issues, but relies on the findings of the Indiana Supreme Court.

FINDING

The Department respectfully denies the taxpayers' protest.

³ *Bryant v. Ind. Dept. of State Rev.*, 660 N.E.2d 290 (Ind.1995). *Hayse v. Ind. Dept. of State Rev.*, 660 N.E.2d 325 (Ind.1995). *Baily v. Ind. Dept. of State Rev.*, 660 N.E.2d 322. *Cliffi v. Ind. Dept. of State Rev.*, 660 N.E.2d 310 (Ind.1995). *Hall v. Ind. Dept. of State Rev.*, 660 N.E.2d 319 (Ind.1995).

¹ Ind. Code § 6-7-3-5

² Ind. Code § 6-8.1-5-1